

United States District Court  
for the District of Utah

**Petition and Order for Summons for Offender Under Supervision**

Name of Offender: **Candice Sargeant**

Docket Number: **1:05-CR-00077-001-TC**

Name of Sentencing Judicial Officer: **Honorable Tena Campbell  
Chief United States District Judge**

Date of Original Sentence: **April 11, 2006**

Original Offense: **Possession of Methamphetamine with Intent to Distribute**

Original Sentence: **36 months imprisonment, 48 months term of supervised release**

Type of Supervision: **Supervised Release**

Supervision Began: **September 23, 2008**

**PETITIONING THE COURT**

☒ To issue a summons

Ogden, UT

**CAUSE**

The probation officer believes that the offender has violated the conditions of supervision as follows:

**Allegation No. 1:** During the months of October and November 2008, the defendant associated with a convicted felon.

Evidence in support of this allegation consists of records of the United States Probation Office.

**Allegation No. 2:** During the months of October and November 2008, the defendant failed to follow the instructions of her assigned Probation Officer by continuing to associate with a convicted felon after being instructed not to do so.

Evidence in support of this allegation consists of records of the United States Probation Office.

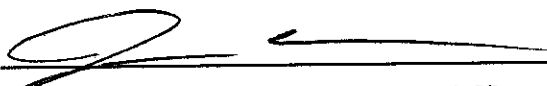
**Allegation No. 3:** On or about December 15, 2008, the defendant associated with a convicted felon.

Evidence in support of this allegation consists of records of the Box Elder County Sheriff's Office.

**Allegation No. 4:** On or about December 18, 2008, the defendant failed to follow the instructions of her assigned Probation Officer by continuing to associate with a convicted felon after being instructed not to do so.

Evidence in support of this allegation consists of records of the United States Probation Office.

I declare under penalty of perjury that the foregoing is true and correct.

  
Jayson Kelker, U.S. Probation Officer  
Date: December 19, 2008

**THE COURT ORDERS:**

- ☒ The issuance of a summons  
☐ The issuance of a warrant  
☐ No action  
☐ Other

*Tena Campbell*

Honorable Tena Campbell  
Chief United States District Judge

Date: *1-5-2008*

Andrew H. Stone (USB #4921)  
Brent A. Orozco (USB #9572)  
JONES WALDO HOLBROOK & McDONOUGH PC  
*Attorneys for PC Consulting, Inc. dba TimeShareWare*  
170 South Main Street, Suite 1500  
Salt Lake City, Utah 84101  
Telephone: (801) 521-3200

RECEIVED  
FILED  
U.S. DISTRICT COURT  
2009 JAN -5 P 2:55 PM  
JUDGE TENA CAMPBELL  
DISTRICT OF UTAH  
BY: \_\_\_\_\_  
CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

PC CONSULTING, INC. dba  
TIMESHAREWARE, a Utah Corporation,

Plaintiff(s),

vs.

KING'S CREEK PLANTATION, LLC, a  
Virginia limited liability company, and  
RICHARD HILL, an individual,

Defendant(s).

ORDER GRANTING PLAINTIFF'S  
*EX PARTE* APPLICATION FOR  
EXTENSION OF TIME TO SERVE  
RICHARD HILL

Civil No. 1:08-cv-60

Judge Tena Campbell

This matter comes before the Court on Plaintiff PC Consulting, Inc. dba  
TimeShareWare's *Ex Parte* Application for Extension of Time to Serve Richard Hill.

The Court, having review the Application and good cause appearing, hereby ORDERS  
that the time for serving Richard Hill is extended 120 days.

Dated this 5 day of Jan, 2009.

By: \_\_\_\_\_

Honorable Tena Campbell  
District Court Judge

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH     NORTHERN DIVISION

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Muriel S. Derr,  
Plaintiff,

v.

Mervyn's LLC, *et al.*,  
Defendant.

SCHEDULING ORDER

Case No.1:08-CV-94

Magistrate Judge Samuel Alba

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Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge<sup>1</sup> received the Attorneys' Planning Report filed by counsel (docket #14). The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

\*\*ALL TIMES 4:30 PM UNLESS INDICATED\*\*

- |    |  |           |
|----|--|-----------|
| 1. | PRELIMINARY MATTERS  | DATE      |
|    | Nature of claims and any affirmative defenses:   |           |
| a. | Was Rule 26(f)(1) Conference held?   | 12/03/08  |
| b. | Has Attorney Planning Meeting Form been submitted?                                       | 12/04/08  |
| c. | Was 26(a)(1) initial disclosure completed?   | 01/05/09  |
|    |  |           |
| 2. | DISCOVERY LIMITATIONS  | NUMBER    |
| a. | Maximum Number of Depositions by Plaintiff(s)  | <u>5</u>  |
| b. | Maximum Number of Depositions by Defendant(s)  | <u>5</u>  |
| c. | Maximum Number of Hours for Each Deposition<br>(unless extended by agreement of parties) | <u>7</u>  |
| d. | Maximum Interrogatories by any Party to any Party  | <u>25</u> |
| e. | Maximum requests for admissions by any Party to any<br>Party                             | <u>30</u> |

- f. Maximum requests for production by any Party to any Party 30

3. AMENDMENT OF PLEADINGS/ADDING PARTIES<sup>2</sup> DATE
- |    |  |            |          |
|----|--|------------|----------|
| a. | Last Day to File Motion to Amend Pleadings | Plaintiff  | 02/06/09 |
|    |  | Defendants | 02/20/09 |
| b. | Last Day to File Motion to Add Parties     | Plaintiff  | 02/06/09 |
|    |  | Defendants | 02/20/09 |
4. RULE 26(a)(2) REPORTS FROM EXPERTS<sup>3</sup> DATE
- |    |                 |          |
|----|-----------------|----------|
| a. | Plaintiff       | 03/20/09 |
| b. | Defendant       | 04/10/09 |
| c. | Counter reports | 05/22/09 |
5. OTHER DEADLINES DATE
- |    |  |                 |
|----|--|-----------------|
| a. | Discovery to be completed by:  |                 |
|    | Fact discovery   | 03/20/09        |
|    | Expert discovery   | 06/26/09        |
| b. | (optional) Final date for supplementation of disclosures and discovery under Rule 26 (e) | <u>03/20/09</u> |
| c. | Deadline for filing dispositive or potentially dispositive motions                       | 07/10/09        |
6. SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION DATE
- |    |                                       |               |
|----|---------------------------------------|---------------|
| a. | Referral to Court-Annexed Mediation:  | <u>Yes/No</u> |
| b. | Referral to Court-Annexed Arbitration | <u>Yes/No</u> |
| c. | Evaluate case for Settlement/ADR on   | 06/26/09      |
| d. | Settlement probability:               |               |

*Specify # of days for Bench or Jury trial as appropriate.  
Shaded areas will be completed by the court.*

7.	TRIAL AND PREPARATION FOR TRIAL	TIME	DATE
a.	Rule 26(a)(3) Pretrial Disclosures <sup>4</sup>		
	Plaintiff		<u>11/06/09</u>
	Defendant		<u>11/06/09</u>
b.	Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule)		<u>00/00/00</u>
c.	Special Attorney Conference <sup>5</sup> on or before		<u>11/17/09</u>
d.	Settlement Conference <sup>6</sup> on or before		<u>11/17/09</u>
e.	Final Pretrial Conference	10:00 a.m.	<u>12/01/09</u>
f.	Trial	<u>Length</u>	
	i. Bench Trial	Two days	8:30 a.m. <u>12/17/09</u>
	ii. Jury Trial	<u># days</u>	__:___.m. <u>00/00/00</u>

8. OTHER MATTERS

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

BY THE COURT:



Samuel Alba  
U.S. Magistrate Judge

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<sup>1</sup> The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).

<sup>2</sup> Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

<sup>3</sup> A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.

<sup>4</sup> Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

<sup>5</sup> The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

<sup>6</sup> The Settlement Conference does not involve the Court unless a separate order is entered. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

Jay Barnes (9874)  
Bradford D. Myler (7089)  
Attorney for Plaintiff  
170 South Interstate Plaza Dr., Ste. 150  
Lehi, UT 84043  
Telephone: (801) 766-542  
Facsimile: (801) 766-5482

UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

TERESA BOSWELL,

Plaintiff,

V.

MICHAEL ASTRUE  
CURRENT COMMISSIONER  
OF THE SOCIAL SECURITY  
ADMINISTRATION,

Defendant,

CIVIL ACTION NO.  
1:08cv00114

## SCHEDULING ORDER

The Court establishes the following scheduling order:

1. The answer of the Defendant is on file.
2. Plaintiff's brief should be filed by February 13, 2009.
3. Defendant's answer brief should be filed by March 16, 2009.
4. Plaintiff may file a reply brief by March 31, 2009.

DATED this 6th day of January 2009.

BY THE COURT:

BY THE COURT:  
*Brooke E. Wells*

Honorable Judge Brook C. Wells



IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
NORTHERN DIVISION

LYNN K. MAURER,  
Plaintiff,

vs.

MICHAEL J. ASTRUE,  
Commissioner of Social  
Security,  
Defendant.

**SCHEDULING ORDER**

Case No. 1:08-CV-128-TS-SA

This Social Security appeal has been referred to the United States Magistrate Judge for appropriate proceedings, pursuant to 28 U.S.C. § 636(b)(1)(B). In order to facilitate the prompt disposition of this case by the Court,

**IT IS HEREBY ORDERED** that **within eleven days of the date of this scheduling order**, the parties shall file a joint statement as to the following items:

1. A statement as to whether oral argument to follow briefing is desired.
2. A statement as to whether, pursuant to 28 U.S.C. § 636(c), both parties consent to the United States Magistrate Judge conducting all proceedings in the

case, including entry of final judgment, with appeal to the United States Court of Appeals for the Tenth Circuit. The parties are advised that they are free to withhold consent without adverse substantive consequences. See 28 U.S.C. § 636(c); Fed. R. Civ. P. 73(b).

3. Whether the briefing schedule, set forth below, creates any special hardship.
4. A description of any pending or contemplated motions.

**IT IS FURTHER ORDERED** that, on or before the following dates, the parties shall file and serve a memorandum setting forth concisely the basis for the affirmance or reversal of the Commissioner's final decision, or request for remand under sentence six of 42 U.S.C. § 405(g), and a detailed analysis of the administrative record with **pinpoint citations** of authorities in support of the party's position, and to the administrative record:

**PLAINTIFF:** February 9, 2009

**COMMISSIONER:** March 16, 2009

**PLAINTIFF'S REPLY (if any):** March 30, 2009

The text of the memoranda, including footnotes, must be in a 12-point font size.

Upon receipt of the parties' memoranda, if oral argument has been requested, the Court will determine whether oral argument

will be scheduled. Oral argument is not a necessary part of the review process, and the Court normally determines Social Security appeals on the basis of the briefs without oral argument. See D. U. Civ. R. 7-1(f).

In the absence of consent to jurisdiction of the Magistrate Judge pursuant to 28 U.S.C. § 636(c), the Magistrate Judge will prepare a Report and Recommendation for consideration by the assigned District Court Judge.

The Court will make every effort to enter a final determination of this appeal in a timely manner. Motion practice in accordance with Rule 12(c) (judgment on the pleadings) or Rule 56 (summary judgment) of the Federal Rules of Civil Procedure is inappropriate.

DATED this 6th day of January, 2009.

BY THE COURT:

A handwritten signature in blue ink, appearing to read 'Samuel Alba', is written over a horizontal line.

Samuel Alba  
United States Magistrate Judge

FILED  
U.S. DISTRICT COURT

2009 JAN -6 A 11: 27

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IN THE UNITED STATES DISTRICT COURT  
STATE OF UTAH, CENTRAL DIVISION

---

BY: \_\_\_\_\_  
DEPUTY CLERK

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THE UNITED STATES OF AMERICA,	)	ORDER GRANTING DEFENSE
Plaintiff,	)	MOTION TO CONTINUE SENTENCE
	)	HEARING
vs.	)	
	)	
GARY DRAWN,	)	2:00-CR-34 TS
Defendant	)	

---

Based on the Motion of Defense Counsel, the need to have the three pending cases consolidated and the defendant formally screened for mental health or drug court; the Court hereby continues the Supervised Release Violation Sentence Hearing and will reset the matter when the pending issues are resolved.

DATED this 6<sup>th</sup> day of January, 2009.

  
\_\_\_\_\_  
HONORABLE JUDGE TED STEWART  
UNITED STATES DISTRICT COURT JUDGE

**United States District Court  
for the District of Utah**

**Request and Order to Withdraw Warrant or Summons**

Name of Offender: **Davis Fotu**Docket Number: **2008-01-CR-00249-001-TS**Name of Sentencing Judicial Officer: **Honorable Ted Stewart  
United States District Judge**Date of Original Sentence: **November 29, 2001**Original Offense: **Felon in Possession of a Firearm**Original Sentence: **77 Months Bureau of Prisons Custody/36 Months Supervised Release**Type of Supervision: **Supervised Release**Supervision Began: **July 18, 2008**

**PETITIONING THE COURT**

☒ [ X ] To withdraw the warrant or summons issued December 15, 2008 as follows:

**CAUSE**

On December 31, 2008, the United States Probation Office was notified that the alleged victims in the November 27, 2008 assault case could not identify the defendant as the suspect. As a result, the Utah State Probation and Parole agent has submitted a recommendation of release to the Parole Board. It is expected that he will be released from the Utah State Prison today. At this time, there is not sufficient evidence for law enforcement to arrest the defendant for the alleged assault. Based on this information, it is respectfully recommended that the Warrant for Arrest issued on December 15, 2008 be withdrawn.

I declare under penalty of perjury that the foregoing is true and correct



Richard G. Law, Supervising U.S. Probation Officer  
Date: December 31, 2008

**THE COURT ORDERS:**

- ☒ [ X ] That the warrant or summons issued  
December 15, 2008 be withdrawn  
☐ [ ] No action  
☐ [ ] Other



Honorable Ted Stewart  
United States District Judge

Date: 12/31/08

United States District Court  
for the District of Utah

**Request and Order for Modifying Conditions of Supervision  
With Consent of the Offender**  
(Waiver of hearing attached)

FILED  
U.S. DISTRICT COURT  
RECEIVED  
2009 JAN -5 2 256  
JUDGE TENA CAMPBELL  
OFFICE OF  
JUDGE TENA CAMPBELL

Name of Offender: **Justin Horton-Hansen**

Docket Number: **2:08CR-00824-001-TC**

Name of Sentencing Judicial Officer: **Honorable Tena Campbell**  
**Chief United States District Judge**

Date of Original Sentence: **May 21, 2002**

Original Offense: **Possession with Intent to Distribute Methamphetamine, Possession of a  
Weapon by a Restricted Person**

Original Sentence: **60 months BOP/48 months TSR**

Type of Supervision: **Supervised Release**

Supervision Began: **June 2, 2006**

**PETITIONING THE COURT**

☒ To modify the conditions of supervision as follows:

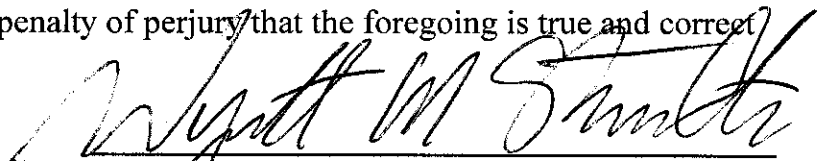
The defendant shall participate in mental health treatment, to include domestic violence treatment, under a copayment plan as directed by the probation office, take any mental health medications as prescribed, and not possess or consume alcohol, nor frequent businesses where alcohol is the primary item of order, during the course of treatment or medication.

**CAUSE**

On July 27, 2008, the defendant committed a domestic assault. The victim in this case is the defendant's wife. On August 19, 2008, the defendant voluntarily signed a waiver, modifying his supervise release conditions to add Domestic Violence Treatment. On December 23, 2008, the defendant was sentenced to five days jail, in addition a \$550 fine and domestic violence treatment was ordered.

With the exception to this incident, the defendant has done well on supervision. The assault has some mitigating circumstances in it, and this officer feels it unnecessary to impose further sanctions. However, it is requested that the defendant complete a domestic violence treatment program.

I declare under penalty of perjury that the foregoing is true and correct

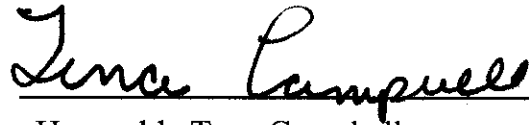


Wyatt M Stanworth, U.S. Probation Officer

Date: December 29, 2008

**THE COURT ORDERS:**

- ☒ The modification of conditions as noted above  
☐ No action  
☐ Other



Honorable Tena Campbell  
Chief United States District Judge

Date: 1-5-2009

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
PROBATION AND PRETRIAL SERVICES OFFICE**

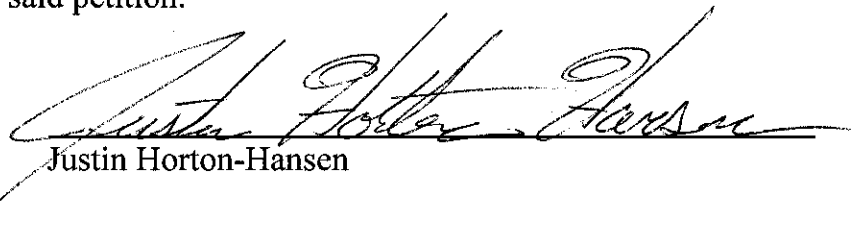
**WAIVER OF RIGHT TO HEARING PRIOR TO  
MODIFICATION OF CONDITIONS OF SUPERVISION**

I have been advised by United States Probation Officer Wyatt M Stanworth that he has submitted a petition and report to the Court recommending that the Court modify the conditions of my supervision in Case No.2:01-CR-00824-001-TC. The modification would be:

The defendant shall participate in mental health treatment, to include domestic violence treatment, under a copayment plan as directed by the probation office, take any mental health medications as prescribed, and not possess or consume alcohol, nor frequent businesses where alcohol is the primary item of order, during the course of treatment or medication.

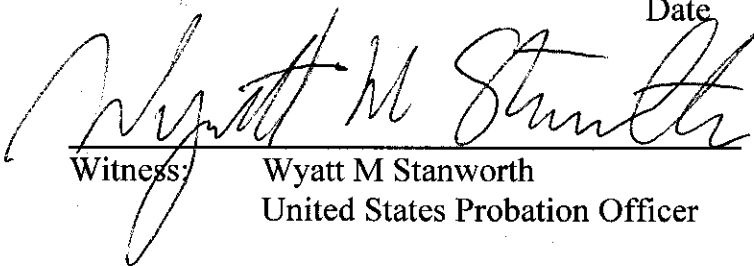
I understand that should the Court so modify my conditions of supervision, I will be required to abide by the new condition(s) as well as all conditions previously imposed. I also understand the Court may issue a warrant and revoke supervision for a violation of the new condition(s) as well as those conditions previously imposed by the Court. I understand I have a right to a hearing on the petition and to prior notice of the date and time of the hearing. I understand that I have a right to the assistance of counsel at that hearing.

Understanding all of the above, I hereby waive the right to a hearing on the probation officer's petition, and to prior notice of such hearing. I have read or had read to me the above, and I fully understand it. I give full consent to the Court considering and acting upon the probation officer's petition to modify the conditions of my supervision without a hearing. I hereby affirmatively state that I do not request a hearing on said petition.

  
Justin Horton-Hansen

August 19, 2008

Date

  
Witness: Wyatt M Stanworth  
United States Probation Officer



United States District Court  
for the District of Utah

**Request and Order for Modifying Conditions of Supervision**  
**With Consent of the Offender**  
*(Waiver of hearing attached)*

Name of Offender: **Michael David Kramer**

Docket Number: **2:03-CR-00849-001 TC**

Name of Sentencing Judicial Officer: **Honorable Tena Campbell**  
**United States District Judge**

Date of Original Sentence: **May 14, 2004**

Original Offense: **Possession of Stolen Mail, Bank Fraud, Access Device Fraud**

Original Sentence: **18 Months BOP/ 36 Months Supervised Release**

Type of Supervision: **Supervised Release**

Supervision Began: **August 18, 2005**

**PETITIONING THE COURT**


☒ To modify the conditions of supervision as follows:

The defendant shall participate in a mental health treatment program under a copayment plan as directed by the probation office, take any mental health medications as prescribed, and not possess or consume alcohol, nor frequent businesses where alcohol is the primary item of order, during the course of treatment or medication.

**CAUSE**


The defendant has identified issues that need to be addressed and has expressed desire to attend treatment.

I declare under penalty of perjury that the foregoing is true and correct

  
Anrico Delray, U.S. Probation Officer  
Date: January 5, 2009

**THE COURT ORDERS:**

- ☒ The modification of conditions as noted above  
☐ No action  
☐ Other

  
\_\_\_\_\_

Honorable Tena Campbell  
United States District Judge

Date: 1-6-2008

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
PROBATION AND PRETRIAL SERVICES OFFICE**

**WAIVER OF RIGHT TO HEARING PRIOR TO  
MODIFICATION OF CONDITIONS OF SUPERVISION**

I have been advised by United States Probation Officer Anrico Delray that he/she has submitted a petition and report to the Court recommending that the Court modify the conditions of my supervision in Case No.2:03-CR-00849-001 TC. The modification would be:

The defendant shall participate in a mental health treatment program under a copayment plan as directed by the probation office, take any mental health medications as prescribed, and not possess or consume alcohol, nor frequent businesses where alcohol is the primary item of order, during the course of treatment or medication.

I understand that should the Court so modify my conditions of supervision, I will be required to abide by the new condition(s) as well as all conditions previously imposed. I also understand the Court may issue a warrant and revoke supervision for a violation of the new condition(s) as well as those conditions previously imposed by the Court. I understand I have a right to a hearing on the petition and to prior notice of the date and time of the hearing. I understand that I have a right to the assistance of counsel at that hearing.

Understanding all of the above, I hereby waive the right to a hearing on the probation officer's petition, and to prior notice of such hearing. I have read or had read to me the above, and I fully understand it. I give full consent to the Court considering and acting upon the probation officer's petition to modify the conditions of my supervision without a hearing. I hereby affirmatively state that I do not request a hearing on said petition.

M. Kramer

Michael David Kramer

1-5-08

Date

Anrico Delray

Witness: Anrico Delray  
United States Probation Officer

PROB 35  
(Rev. 7/97)

FILED  
U.S. DISTRICT COURT

**Report and Order Terminating Supervised Release  
Prior to Original Expiration Date**

2009 JAN -5 P 2:55

UNITED STATES DISTRICT COURT

RECEIVED

DISTRICT OF UTAH  
BY: DEPUTY CLERK

for the

DISTRICT OF UTAH

OFFICE OF  
JUDGE TENA CAMPBELL

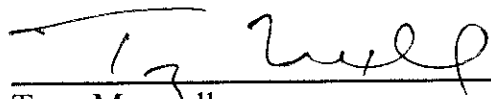
UNITED STATES OF AMERICA

v. Criminal No. 2:05-CR-00913-001-PGC

MARTY SHAFFER


On June 13, 2006 the above named was placed on Supervised Release for a period of three years. The defendant has complied with the rules and regulations of Supervised Release and is no longer in need of supervision. It is accordingly recommended that the defendant be discharged from supervision.

Respectfully submitted,

  
\_\_\_\_\_  
Tony Maxwell  
United States Probation Officer

Pursuant to the above report, it is ordered that the defendant be discharged from supervision and that the proceedings in the case be terminated.

Dated this 5 day of Jan, 2009.

  
\_\_\_\_\_  
Tena Campbell  
United States Chief District Judge

United States Probation Office  
for the District of Utah

RECEIVED

Report on Offender Under Supervision

311 - 346

OFFICE OF

Name of Offender: **Marty Shaffer**

Docket Number: **2:05-CR-00913-001-LPGC**

Name of Sentencing Judicial Officer: **Honorable Paul G. Cassell**  
**United States District Judge**

Date of Original Sentence: **June 13, 2006**

Original Offense: **Possession of Firearm By Convicted Felon**

Original Sentence: **21 Months BOP Custody/ 36 Months TSR**

Type of Supervision: **Supervised Release** Supervision Began: **October 3, 2007**

**SUPERVISION SUMMARY**

Based on the above-named offender's compliance with the terms of supervised release, please find the attached Report and Order for Terminating Supervised Release Prior to Original Expiration Date for the Court's review and consideration.

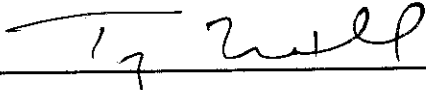
Since initiating supervised release Mr. Shaffer has completed all active terms of supervision while maintaining compliance with standard conditions of release. He completed required substance abuse therapy and has submitted to random drug testing throughout, with no evidence of a return to illicit drug use. Illicit drug use has been Mr. Shaffer's primary obstacle in life. With success in addressing substance abuse issues he concurrently found stability in terms of gainful employment and family matters. In this time Mr. Shaffer has married, resolved personal financial obligations, and continues to serve as a productive member of his immediate family.

In addition to meeting all supervision requirements, Mr. Shaffer has exhibited a cooperative demeanor in all interactions with the United States Probation Office. He embraced the necessity and opportunity to get his post-imprisonment life in order and both he and his family have benefitted from the changes he has made. In short, Mr. Shaffer has accrued all of the benefits that supervision can provide and is no longer in need of active supervision.

Attempts to solicit comment on this matter from Special Assistant United States Attorney Robert E. Steed were unsuccessful. The instant offense did not involve aggravating sentencing factors nor is Mr. Shaffer viewed as a threat to the community.

If the Court desires more information or another course of action, please contact me at (801) 535-7338.

I declare under penalty of perjury that the foregoing is true and correct

  
\_\_\_\_\_  
Tony Maxwell  
U.S. Probation Officer  
Date: December 29, 2008

U.S. RECEIVED  
2009 JAN -6 A 10:22  
OFFICE OF  
JUDGE TENA CAMPBELL  
BY: DEPUTY CLERK

SAVAGE, YEATES & WALDRON  
E. Scott Savage (2865)  
Stephen R. Waldron (6810)  
Kyle C. Thompson (11242)  
170 South Main Street, Suite 500  
Salt Lake City, Utah 84101  
Telephone: (801) 328-2200

Attorneys for Defendant and Third-Party Plaintiff,  
Union Pacific Railroad Company

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )

vs. )

UNION PACIFIC RAILROAD )  
COMPANY, )  
)  
Defendant. )

UNION PACIFIC RAILROAD )  
COMPANY, )  
)  
Third-Party Plaintiff, )

vs. )

PANDROL JACKSON and HARSCO )  
COMPANY, )  
)  
Third-Party Defendants. )

**ORDER GRANTING  
UNION PACIFIC RAILROAD  
COMPANY'S *EX PARTE* MOTION  
FOR LEAVE TO FILE  
AN OVERLENGTH REPLY  
MEMORANDUM IN SUPPORT  
OF MOTION FOR ENTRY  
OF JUDGMENT**

Case No. 2:05-CV-00545 TC

Honorable Tena Campbell

Magistrate Judge Brooke C. Wells

The Court having fully considered defendant/third-party plaintiff Union Pacific Railroad Company's *Ex Parte* Motion for Leave to File an Overlength Reply Memorandum in Support of

Motion for Entry of Judgment, and for good cause shown,

IT IS HEREBY ORDERED that defendant/third-party plaintiff Union Pacific Railroad Company is granted leave to file an overlength reply memorandum in support of its Motion for Entry of Judgment containing no more than 17 pages of argument.

DATED this 5<sup>th</sup> day of January, 2009.

THE COURT

*Tena Campbell*

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Honorable Tena Campbell



# UNITED STATES DISTRICT COURT

CENTRAL DIVISION

District of

UNITED STATES OF AMERICA

V.

LUIS MARTIN HERNANDEZ-QUINTANILLA

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX206CR000852-014

USM Number: 15363-081

Rebecca Skordas

Defendant's Attorney

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH  
JAN 06 2009  
BY D. W. H. MARK JONES, CLERK  
DEPUTY CLERK

## THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Felony Information

☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.

☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. § 841(a)(1) and 21 U.S.C. § 846	Conspiracy to Distribute 100 Grams or More of a Substance Containing a Detectable Amount of Heroin		1s

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_

☒ Count(s) 1 and 11 of the Indictment ☐ is ☒ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

1/5/2009

Date of Imposition of Judgment

Signature of Judge

The Honorable Ted Stewart

Name of Judge

U. S. District Judge

Title of Judge

1/6/2009

Date

DEFENDANT: LUIS MARTIN HERNANDEZ-QUINTANILLA  
CASE NUMBER: DUTX206CR000852-014

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

46 months

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: LUIS MARTIN HERNANDEZ-QUINTANILLA  
CASE NUMBER: DUTX206CR000852-014

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

48 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: LUIS MARTIN HERNANDEZ-QUINTANILLA  
CASE NUMBER: DUTX206CR000852-014

### **SPECIAL CONDITIONS OF SUPERVISION**

The defendant shall not illegally reenter the United States. In the event that the defendant should be released from confinement without being deported, he shall contact the United States Probation Office in the district of release within 72 hours of release. If the defendant returns to the United States during the period of supervision, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

DEFENDANT: LUIS MARTIN HERNANDEZ-QUINTANILLA  
 CASE NUMBER: DUTX206CR000852-014

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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<b>TOTALS</b>	\$ <u>0.00</u>	\$ <u>0.00</u>	
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☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: LUIS MARTIN HERNANDEZ-QUINTANILLA  
CASE NUMBER: DUTX206CR000852-014

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- ☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,  
which will be docketed  
separately as a sealed  
document

2009 JAN -5 P 2:55

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

DIST. OF UTAH

CENTRAL DIVISION

BY: \_\_\_\_\_  
DEPUTY CLERK

DALE STEVENS,

Plaintiff,

vs.

CLARK A. McCELLAN,

Defendant.

ORDER OF REFERENCE

Civil No. 2:06 CV 215 TC

IT IS ORDERED that, as authorized by 28 U.S.C. § 636(b)(1)(B) and the rules of this court, the above entitled case, **specifically the issue of attorneys' fees**, is referred to United States Magistrate Judge Paul M. Warner. Judge Warner is directed to manage the case, receive all motions, hear oral arguments, conduct evidentiary hearings as deemed appropriate, and to submit to the undersigned judge a report and recommendation for the proper resolution of dispositive matters presented.

DATED this 5th day of January, 2009.

BY THE COURT:



TENA CAMPBELL  
Chief Judge



FILED  
U.S. DISTRICT COURT

2009 JAN -6 P 2:47

RECEIVED

DISTRICT OF UTAH

BY:

DEPUTY CLERK

OFFICE OF  
JUDGE TENA CAMPBELL

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**IN THE UNITED STATES DISTRICT COURT**  
**DISTRICT OF UTAH, CENTRAL DIVISION**

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**ARGYLL EQUITIES, LLC, and SW  
ARGYLL INVESTMENTS, LLC,**

**Plaintiffs,**

**vs.**

**CLARK REID POWELL, STAGECOACH  
PROPERTIES, LLC, AMERICAN RANCH  
PROPERTIES, LLC, AMERICAN EAGLE  
INVESTMENT COMPANY, LLC, B & L  
LAND TRUST, WILLIAM ARRINGTON,  
EAGLE I LAND TRUST, AND JOHN  
DOES 1 THROUGH 10,**

**Defendants.**

**ORDER GRANTING STIPULATED  
MOTION FOR EXTENSION OF TIME**

**Case No.: 2:06CV00358 TC**

**Honorable Tena Campbell**

**AMERICAN EAGLE INVESTMENT  
COMPANY, LLC; AMERICAN RANCH  
PROPERTIES, LLC, STAGECOACH  
PROPERTIES CO., LLC; STAGECOACH  
PROPERTIES, LLC; STAGECOACH  
COUNTRY RESORTS, LLC; and CLARK  
R. POWELL,**

**Counterclaimants and Third-Party  
Plaintiffs,**

**vs.**

**ARGYLL EQUITIES, LLC, and SW  
ARGYLL INVESTMENTS, LLC,**

**Counterclaim Defendants,**

**and**

**F.I.T. MANAGEMENT GROUP, LLC;  
F.I.T. CAPITAL, LLC; DOUGLAS A.  
McCLAIN SR.; JAMES T. MICELI; AND  
JOHN DOES I-X**

**Third-Party Defendants.**

Based on the Stipulated Motion for Extension of Time filed by Plaintiffs Argyll Equities, LLC, and SW Argyll Investments, LLC ("Plaintiffs") and Defendants Clark Reid Powell, Stagecoach Properties, LLC, American Ranch Properties LLC, and American Eagle Investment Company, LLC ("Defendants"), and good cause appearing, it is hereby ORDERED THAT Plaintiffs may have an extension of time through and including January 8, 2009 to file a Reply to Defendant's Memorandum in Opposition to Plaintiffs' Motion for Partial Summary Judgment.

DATED this 6<sup>th</sup> day of January 2009.

BY THE COURT

*Tena Campbell*

---

Honorable Tena Campbell

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

LAUREN BARKER,

Plaintiff,

vs.

MANTI TELEPHONE COMPANY, PAUL  
COX, LAURA DAHL, KIRK DAHL

Defendants.

---

ORDER

AND

MEMORANDUM DECISION

Case No. 2:06-CV-00812-TC-SA

Plaintiff Lauren Barker filed this action seeking damages, injunctive relief, and attorney's fees for Kirk Dahl's part in disseminating information regarding her personal telephone bill. She alleges that his actions constituted a tortious invasion of privacy. Mr. Dahl moved for summary judgment, arguing that Ms. Barker cannot demonstrate that he committed any of the four torts that comprise an invasion of privacy under Utah law. Ms. Barker opposed the motion, maintaining that Mr. Dahl intruded upon her seclusion and publicly disclosed embarrassing personal facts about her, both of which are invasions of privacy.

The undisputed material facts demonstrate that Mr. Dahl's actions do not constitute a tortious invasion of privacy. Accordingly, the court GRANTS Mr. Dahl's motion to dismiss.

**BACKGROUND**

Mr. Dahl and Ms. Barker were coworkers at the Utah Department of Corrections's Central Utah Correctional Facility in Gunnison, Utah. Mr. Dahl's spouse, Laura Dahl, was an

employee of Manti Telephone Company, which was Ms. Barker's telecommunications provider. Through her employment, Ms. Dahl learned that Ms. Barker's private home phone bill was \$1500. She also discovered that the charges stemmed from phone calls made to Tonga.

Ms. Dahl told Mr. Dahl about the charges to Ms. Barker's account. Two to four days later, Mr. Dahl approached Ms. Barker. He mentioned the phone bill and asked her who she was calling in Tonga. Specifically, he asked if she was calling a former inmate at the correctional facility who had been paroled to Tonga. Ms. Barker told him the calls were to a friend named "Eric" who was in Tonga. She also told him that her phone bill was none of his business. The parties dispute the Dahls' motives in this encounter. The Dahls claim they were concerned about Ms. Barker and wanted to give her a warning about the bill. Ms. Barker, noting that she paid her phone bill two days before Mr. Dahl talked to her, contends that the Dahls had no legitimate reason for pursuing the matter.

Mr. Dahl did not keep this information about Ms. Barker to himself. He spoke with Angela Allen, a mutual friend of Mr. Dahl and Ms. Barker, and told her about Ms. Barker's bill and her explanation of the phone calls. In the spring of 2006, Mr. Dahl talked with McKray Johnson and Heidi Johnson, both employed by the Department of Corrections. Again, he told them about Ms. Barker's phone bill and her story about "Eric."

In April of 2006, Ms. Johnson provided the Department of Corrections with information about Ms. Barker, including observations of her fraternizing with a parolee and the 2005 phone calls to Tonga. As a result, Ms. Barker was investigated by the Department. Mr. Dahl was questioned as part of the investigation and he told investigators about the phone bill and Ms. Barker's explanation. Ultimately, Ms. Barker admitted to fraternizing with parolees, including the parolee released to Tonga. She resigned from the Department of Corrections.

Ms. Barker initiated this suit in September of 2006, against defendants Manti Telephone Company, Paul Cox, Ms. Dahl, and Mr. Dahl. The claims against all defendants, other than Mr. Dahl, were dismissed at the request of the parties on December 18, 2008. (Doc. Num. 88) The termination of those defendants resulted in the dismissal of all federal statutory claims, leaving only the invasion of privacy claim against Mr. Dahl.

### **JURISDICTION**

First, the court must consider whether it retains jurisdiction over this case. The termination of the federal statutory claims leaves only a state law tort claim between two Utah residents. A federal court may exercise supplemental jurisdiction over state law claims that are part of the “same case or controversy” as claims over which the court has original jurisdiction. 28 U.S.C. § 1367(a). If the court dismisses the federal claims, leaving only the state claims, the “district court has discretion to try state claims in the absence of any triable federal claims.” Anglemyer v. Hamilton County Hosp., 58 F.3d 533, 541 (10th Cir. 1995) (quoting Thatcher Enter. v. Cache County Corp., 902 F.2d 1472 (10th Cir.1990)). “[T]hat discretion should be exercised in those cases in which, given the nature and extent of pretrial proceedings, judicial economy, convenience, and fairness would be served by retaining jurisdiction.” Id. (quoting Thatcher Enter., 902 F.2d at 1472). Thus, “[a] federal court justifiably may retain jurisdiction of the pendent claims when substantial time and energy have been expended on the case prior to the disposition of the federal claims.” Id. (quoting Jones v. Intermountain Power Project, 794 F.2d 546, 550 (10th Cir.1986)). Where, however, the state law is in flux, “it is particularly appropriate for the federal courts to leave the continuing development and application of that cause of action to the state courts.” Ball v. Renner, 54 F.3d 664, 669 (10th Cir.1995).

In this case, the litigation has been proceeding for over two years. The parties have

completed discovery. This motion to dismiss was fully briefed before the dismissal of the federal claims. Furthermore, as explained below, Utah law is well developed in this area. Given the late stage of this litigation at the time the federal claims were dismissed and the clarity of Utah law with respect to these claims, the court will exercise its discretion to retain jurisdiction of the claim against Mr. Dahl.

### **STANDARD OF REVIEW**

Summary judgment is proper “if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). In conducting its analysis, the court must view all of the facts in the light most favorable to the non-movant and make all reasonable inferences in favor of the non-moving party. Piercy v. Maketa, 480 F.3d 1192, 1197 (10th Cir. 2007). Summary judgment should be granted “against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

### **ANALYSIS**

The dispositive question in this case is whether the evidence can support a claim that Mr. Dahl violated Ms. Barker’s right to privacy. In Utah, invasion of privacy is comprised of four distinct torts: (1) intrusion upon seclusion, (2) appropriation of name or likeness, (3) public disclosure of embarrassing private facts, and (4) publicity which places an individual in a false light in the public eye. Stien v. Marriott Ownership Resorts, Inc., 944 P.2d 374, 377-78 (Utah Ct. App. 1997). Ms. Barker alleges intrusion upon seclusion and disclosure of private facts.

## **1. Intrusion upon seclusion**

“[I]n order to establish a claim of intrusion upon seclusion, the plaintiff must prove two elements by a preponderance of the evidence: (1) that there was ‘an intentional substantial intrusion upon the solitude or seclusion of the complaining party,’ and (2) the intrusion ‘would be highly offensive to the reasonable person.’” Stien, 944 P.2d at 378 (quoting Turner v. General Adjustment Bureau, Inc., 832 P.2d 62, 67 (Utah Ct. App. 1992)). Utah law follows the Restatement for this cause of action. Id.

### **A. Substantial Intrusion**

Mr. Dahl argues this claim fails because he was a passive recipient of the information and did not pry into Ms. Barker’s private affairs. Ms. Barker argues that Mr. Dahl committed an intrusion by “interjecting himself into the Plaintiff’s private affairs.” (Pl.’s Mem. Opp. Summ. J. 8) She claims the court should infer Mr. Dahl directed Ms. Dahl to obtain Ms. Barker’s billing records and that this constituted a substantial intrusion. She further claims that it was Mr. Dahl’s use of the information that constitutes “the crux of the tort.” (Id. at 9)

First, there is no evidence that Mr. Dahl was involved in procuring the billing information. Ms. Barker does not point to any such evidence, but argues the court should infer his involvement. As Mr. Dahl points out, however, the only evidence in the record as to Ms. Dahl’s motivations in looking at the bill is her deposition testimony. She testified that her coworkers brought the bill to her attention. (Dep. of Laura Dahl 4-5, Aug. 6, 2007) As a result, Ms. Barker would not be able to show by a preponderance of the evidence that Mr. Dahl actively sought the billing records. In the absence of any contravening evidence, Ms. Barker’s assertion does not create a material fact for trial.



In addition, Mr. Dahl's role in relaying information about the bill does not constitute a substantial intrusion. As explained in the Restatement of Torts (Second), the tort of intrusion upon seclusion "does not depend upon any publicity given to the person whose interest is invaded or to his affairs. It consists solely of an intentional interference with his interest in solitude or seclusion, either as to his person or as to his private affairs or concerns." Restatement (Second) of Torts § 652B cmt. a (1977). In addition, the Restatement further explains,

The invasion may be by physical intrusion into a place in which the plaintiff has secluded himself, as when the defendant forces his way into the plaintiff's room in a hotel or insists over the plaintiff's objection in entering his home. It may also be by the use of the defendant's senses, with or without mechanical aids, to oversee or overhear the plaintiff's private affairs, as by looking into his upstairs windows with binoculars or tapping his telephone wires. It may be by some other form of investigation or examination into his private concerns, as by opening his private and personal mail, searching his safe or his wallet, examining his private bank account, or compelling him by a forged court order to permit an inspection of his personal documents. The intrusion itself makes the defendant subject to liability, even though there is no publication or other use of any kind of the photograph or information outlined.

Restatement (Second) of Torts § 652B cmt. b (1977) (emphasis added). As this comment clarifies, the tort is concerned with an actual intrusion into a space that the plaintiff wishes to remain private. As the Utah courts explained, although a physical intrusion may not always be necessary, "there must be something in the nature of prying or intrusion." Stien, 944 P.2d at 378 (quoting W. Page Keeton et al., Prosser and Keeton on the Law of Torts § 117, at 854-55 (5th ed.1984)). Thus, it is that affirmative physical intrusion, eavesdropping, investigation, examination or prying that constitutes the tort, not any subsequent sharing of the information learned in an intrusion.

Accordingly, the dissemination of what is learned in an intrusion by a passive recipient of

the information is not itself an intrusion upon seclusion. For example, the Pennsylvania courts considered a claim of intrusion upon seclusion where the defendant, a newspaper, had published a column allegedly containing private facts about the plaintiffs. Harris v. Easton Publishing Co., 483 A.2d 1377, 1381 (Pa. Super. Ct. 1984). The newspaper had received the facts, unsolicited, from the state's Department of Welfare. Id. at 1384. The court upheld a grant of summary judgment to the newspaper because "[t]he facts alleged to constitute the invasion of privacy in the instant case were not obtained by the Company by means of any intentional intrusion." Id.

Here, Mr. Dahl's only action was to pass on the information he passively received. His actions, therefore, did not constitute an intrusion upon seclusion and he is entitled to summary judgment on that claim.

B. Highly Offensive to a Reasonable Person

Furthermore, even if Mr. Dahl had somehow committed an intrusion, that intrusion could not be considered highly offensive to a reasonable person. See Stien, 944 P.2d at 379. Although this issue is usually reserved for the jury, "the trial court must make a threshold determination of offensiveness in discerning the existence of a cause of action for intrusion." Id. (quotation omitted). "In making its threshold determination of offensiveness, a court should consider such factors as the degree of intrusion, the context, conduct and circumstances surrounding the intrusion as well as the intruder's motives and objectives, the setting into which he intrudes, and the expectations of those whose privacy is invaded." Id. (quotation omitted).

A reasonable person could not consider Mr. Dahl's actions highly offensive. He told three other people that Ms. Barker had a large phone bill to Tonga. While Ms. Barker might object to the dissemination of this information, a reasonable person could not find it highly

offensive.

## **2. Public disclosure of private facts**

Ms. Barker further alleges that Mr. Dahl committed a tort by publicly disclosing embarrassing private facts about her. To prevail on a claim relating to public disclosure of embarrassing facts, a plaintiff must establish the following elements:

- (1) the disclosure of the private facts must be a public disclosure and not a private one;
- (2) the facts disclosed to the public must be private facts, and not public ones;
- (3) the matter made public must be one that would be highly offensive and objectionable to a reasonable person of ordinary sensibilities.

Shattuck-Owen v. Snowbird Corp., 16 P.3d 555, 558 (Utah 2000). Ms. Barker’s claim fails because she cannot show a public disclosure occurred or that the matter was highly offensive.

### **A. Public Disclosure**

A “[p]ublic disclosure ‘means that the matter is made public, by communicating it to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge.’” Shattuck-Owen, 16 P.3d at 558 (quoting Restatement (Second) of Torts § 652D cmt. a (1977)). The extent of the communication is critical; “communicating a private fact ‘to a small group of persons,’ for example, does not constitute public disclosure.” Shattuck-Owen, 16 P.3d at 558-59 (quoting Restatement (Second) of Torts § 652D cmt. a (1977)). The size of the audience, however, is not dispositive in and of itself. “Rather, the facts and circumstances of a particular case must be taken into consideration in determining whether the disclosure was sufficiently public so as to support a claim for invasion of privacy.” Id. at 559 (quotation omitted).

Mr. Dahl spoke to three people about Ms. Barker's phone bill.<sup>1</sup> This qualifies as a disclosure to a small group, not sufficient to create a public disclosure. Furthermore, there are no distinguishing facts present in this case that might transform a disclosure to a small number of individuals into a public disclosure. See id. at 559. As a result, Mr. Dahl's communications constituted only a private disclosure and were not an invasion of privacy.

B. Highly Offensive and Objectionable

Neither was the communication highly offensive and objectionable. Mr. Dahl disclosed that Ms. Barker had a \$1500 phone bill to Tonga. This type of disclosure cannot be considered "highly offensive and objectionable to a reasonable person of ordinary sensibilities."

Shattuck-Owen, 16 P.3d at 558. Ms. Barker's claim also fails on this ground.

**CONCLUSION**

The undisputed material facts demonstrate that Ms. Barker's invasion of privacy claims fail as a matter of law. Accordingly, the defendant's motion for summary judgment is GRANTED.

SO ORDERED this 6th day of January, 2009.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL  
Chief Judge

---

<sup>1</sup>This does not include the investigators. Ms. Barker does not challenge the disclosures made during the course of the investigation.

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

JAN 05 2009

BY D. MARK JONES, CLERK  
DEPUTY CLERK

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

THOMAS SAY TANG,  
Defendant.

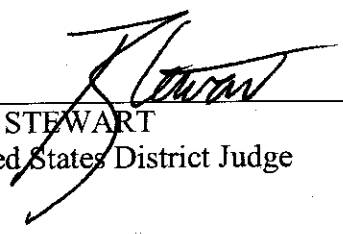
ORDER GRANTING MOTION FOR  
RETURN OF PROPERTY

Case No. 2:07-CR-161 TS

Based on the motion filed by the Defendant and good cause appearing, it is hereby  
ORDERED that due to Defendant's acquittal, Defendant's passport be returned to him.

DATED January 5, 2009.

BY THE COURT:



TED STEWART  
United States District Judge

# UNITED STATES DISTRICT COURT

FILED  
U.S. DISTRICT COURT

CENTRAL DIVISION

District of

UTAH

UNITED STATES OF AMERICA

V.

NEMIAS SALDANA-PRADO

JUDGMENT IN A CRIMINAL CASE

**AMENDED**

Case Number: DUTX207CR000572-009

USM Number: 14751-081

Joshua Bowland

Defendant's Attorney

## THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Felony Information

☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.

☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. §§ 841(a)(1) and 846	Conspiracy to Distribute Heroin		1s

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_

☒ Count(s) 1, 2 and 37 of the Indictment ☐ is ☒ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

12/18/2008

Date of Imposition of Judgment

Signature of Judge

The Honorable Ted Stewart

Name of Judge

U. S. District Judge

Title of Judge

1/5/2009

Date

DEFENDANT: NEMIAS SALDANA-PRADO  
CASE NUMBER: DUTX207CR000572-009

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

57 months

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: NEMIAS SALDANA-PRADO  
CASE NUMBER: DUTX207CR000572-009

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☒ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.



DEFENDANT: NEMIAS SALDANA-PRADO  
CASE NUMBER: DUTX207CR000572-009

### **SPECIAL CONDITIONS OF SUPERVISION**

The defendant shall not re-enter the United States illegally. In the event that the defendant should be released from confinement without being deported, he shall contact the United States Probation Office in the district of release within 72 hours of release. If the defendant returns to the United States during the period of supervision after being deported, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

DEFENDANT: NEMIAS SALDANA-PRADO  
 CASE NUMBER: DUTX207CR000572-009

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>	\$ 100.00	\$	\$

- ☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------


<b>TOTALS</b>	\$ <u>0.00</u>	\$ <u>0.00</u>
---------------	----------------	----------------

- ☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ the interest requirement is waived for the    ☐ fine    ☐ restitution.
- ☐ the interest requirement for the    ☐ fine    ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: NEMIAS SALDANA-PRADO  
CASE NUMBER: DUTX207CR000572-009

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

The Statement of Reasons attached to the  
original Judgment and Commitment  
has not changed

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U.S. DISTRICT COURT

2009 JAN -5 P 2:56

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

BY: TENA CAMPBELL  
CLERK

UNITED STATES OF AMERICA,

Plaintiff,

v.

IVAN RENE SAUCEDA,

Defendant.

Case # 2:07CR00866-TC

FINAL ORDER OF FORFEITURE

JUDGE: TENA CAMPBELL

WHEREAS, on October 24, 2008, this Court entered a Preliminary Order of Forfeiture, ordering the Defendant to forfeit the Taurus 9mm PT-11 Pro pistol, Serial Number: TZK38788, a Hi-Point Model CF .380 caliber handgun, Serial Number: Obliterated, and associated ammunition and magazines; and

WHEREAS, the United States caused to be published on the government website [www.forfeiture.gov](http://www.forfeiture.gov) notice of this forfeiture and of the intent of the United States to dispose of the property in accordance with the law and as specified in the Preliminary Order, and further notifying all third parties of their right to petition the Court within thirty (30) days for a hearing to adjudicate the validity of their alleged legal interest in the property; and

WHEREAS, notice was served upon Ivan Rene Saucedo; and

WHEREAS, no timely petition has been filed; and

WHEREAS, the Court finds that Defendant had an interest in the property that is subject to forfeiture pursuant to 18 U.S.C. § 924(d)(1);

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that

- Taurus 9mm PT-11 Pro pistol, Serial Number: TZK38788
- Hi-Point Model CF .380 caliber handgun, Serial Number: Obliterated
- Associated ammunition and magazines


is hereby forfeited to the United States of America pursuant to 18 U.S.C. § 924(d)(1).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all right, title and interest to the property described above is hereby condemned, forfeited and vested in the United States of America, and shall be disposed of according to law.

IT IS FURTHER ORDERED that the United States District Court shall retain jurisdiction in the case for the purpose of enforcing this Order.

SO ORDERED; Dated this 5 day of January, 2009.

BY THE COURT:

  
TENA CAMPBELL, Judge  
United States District Court

Don Winder, Utah Bar No. 3519  
WINDER & COUNSEL, P.C.  
175 W. 200 South, Suite 4000  
P.O. Box 2668  
Salt Lake City, Utah 84110  
Tel: (801) 322-2222

Hank Anderson, Texas Bar No. 01220500  
Gant A. Grimes, Texas Bar No. 24042651  
THE ANDERSON LAW FIRM  
4600 Belair  
Wichita Falls, Texas 76310  
Tel: (940) 691-7600  
*Admitted Pro Hac Vice*

ATTORNEYS FOR PLAINTIFFS

UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

JOHN AND TAMARA TOLMAN, et al.,

Plaintiffs,

v.

RUBBERMAID, INC., et al.,

Defendants.

ORDER GRANTING MOTION FOR  
EXPEDITED HEARING ON MOTION TO  
QUASH SUBPOENA BY WASATCH  
WOMEN'S CENTER

Civil No. 2:07-CV-00277

Judge Clark Waddoups

ORDER GRANTING MOTION FOR EXPEDITED HEARING ON MOTION TO  
QUASH SUBPOENA BY WASATCH WOMEN'S CENTER


It is ORDERED that the parties, by counsel, appear for a hearing on the motion to quash subpoena on January 8, 2009 at 11:00 a.m.

The Court will permit the attorneys to participate in the hearing by telephone. However, any such attorney shall advise the Court as soon as possible before the hearing of his or her intention to participate by telephone and shall (1) inform all counsel of his or her appearance by telephone; (2) confer with other attorneys to determine if they wish to appear by telephone; (3) advise the Court of the name of the attorney who will initiate the conference call and all such attorneys appearing by telephone; and (4) initiate a timely conference telephone call with such attorneys to the Court at (801)524-6600 at the time of the scheduled hearing. If the attorneys cannot reach agreement as to the initiator of the call, the Court will make that determination.

IT IS SO ORDERED.

The Clerk is directed to transmit a copy of this order to the counsel or record herein.

DATED: January 6, 2009.

  
Clark Waddoups  
UNITED STATES DISTRICT JUDGE



HOLME ROBERTS & OWEN LLP  
George M. Haley #1302  
David O. Seeley #2906  
J. Andrew Sjoblom, #10860  
Cory A. Talbot #11477  
Elizabeth B. Harris, #11173  
299 South Main Street, Suite 1800  
Salt Lake City, Utah 84111-2263  
Telephone: (801) 521-5800  
Facsimile: (801) 521-9639

*Attorneys for Defendants*

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

---

SEROCTIN RESEARCH &  
TECHNOLOGIES, INC., a Nevada  
Corporation,

Plaintiff,

v.

UNIGEN PHARMACEUTICALS, INC., a  
Colorado Corporation, UNIVERA LIFE  
SCIENCES, dba OASIS LIFE SCIENCES, a  
Colorado Corporation, and DOES 1-100.

Defendants.

ORDER GRANTING EXTENSION OF  
TIME

Case No. 2:07CV582

Judge Tena Campbell  
Magistrate Judge Brooke C. Wells

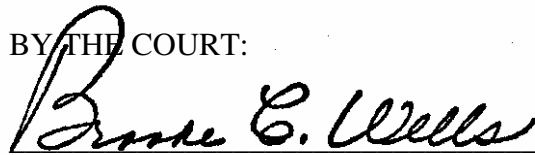
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Pursuant to the Defendants' agreed motion for extension of time and for good cause shown:

IT IS HEREBY ORDERED that Defendants may have to, and including, January 9, 2009, to file their Memorandum in Opposition to Plaintiff's Motion for Leave to File an Amended Complaint.

DATED this 6 of January, 2009.

BY THE COURT:

A handwritten signature in black ink, reading "Brooke C. Wells", written over a horizontal line.

Magistrate Judge Brooke C. Wells

RECEIVED CLERK

DEC 15 2008

U.S. DISTRICT COURT

FILED  
U.S. DISTRICT COURT  
RECEIVED CLERK

DEC 18 2008 18 A 11:31

U.S. DISTRICT COURT UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

Third Party Defendants  
c/o 643 Sky Mountain Blvd  
Hurricane, Utah, 84737  
IN PRO SE  
(435) 216-6283

-----0000000000-----  
IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION  
-----0000000000-----

**LUIS GARZA Y GALINDO**, an individual, :  
**RAFAEL BENITA GARZA**, an individual, :  
**GLOBAL CONSULTANT SERVICES, SA**, a:  
Mexican corporation and, John Does 1 – 100, :

Plaintiffs

vs.

~~{PROPOSED}~~ ORDER  
GRANTING THIRD PARTY  
DEFENDANTS' MOTION TO  
ENLARGE TIME TO ANSWER  
OR OTHERWISE RESPOND

**ASSET RECOVERY TRUST**, a Utah Trust, :  
**DANNY M.K. WONG**, an individual, **DAVID** :  
**THACKER, KELLY THACKER**, individuals, :  
**INTEGRITY OFFICE SUPPORT, LLC**, a :  
Wash. Limited liability Co.,, **JOSEPH K. YAO**,:  
individual, **DWIGHT WILLIAMS**, individual, et al:

Case No. 2:07cv00868

Judge: Sam

Defendants

\_\_\_\_\_  
DWIGHT WILLIAMS, an individual,

Third Party Plaintiff,

Vs.

**DON SHERER, MICHELLE SHERER, JARED**  
**SHERER, JASON SHERER, KEN MCCABE**,  
Does 1-10

Third Party Defendants  
\_\_\_\_\_

This matter comes before the Court on Defendants' Motion to Enlarge Time to Answer or Otherwise Respond to Plaintiffs' Complaint ("Motion to Enlarge Time"). Defendants seek additional time to answer, or otherwise respond, to plaintiffs' complaint because the Third Party Defendants are in Pro Se and the filing of the Third Party Complaint raises complex issues.

The Court hereby GRANTS defendants Motion to Enlarge Time. Defendants may move, answer, or otherwise respond to plaintiffs' complaint, which was filed in this Court on or before January 28<sup>th</sup>, 2009.

**IT IS SO ORDERED.**

Dated 12/17/08



United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

PETER GIBBONS, et al.  Plaintiffs,  vs.  NATIONAL REAL ESTATE INVESTORS, LC, et al.  Defendants,	<b>ORDER</b>    Case No. 2:07-cv-990-CW
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This matter is before the court on Plaintiffs’ Motion for Prejudgment Writ of Attachment of Defendants Betts’ and Howells’ Property and Assets and Request for Order Granting Expedited Discovery in Aid of Writ (Dkt. No. 49). For the reasons set forth during the hearing in this matter, the court GRANTS that motion in part and DEFERS in part as follows:

Plaintiffs are GRANTED expedited discovery for a period of 60 days from the entry of this Order as follows: Plaintiffs may request documents from and depose Mr. Betts and Mr. Howell regarding the status of the assets held by them or in which they have or have since November 2006 held any interest, including, but not limited to, the assets’ location, value and ownership. Plaintiffs are also allowed to conduct discovery limited to the same scope of the other Defendants and third parties as allowed under the Federal Rules of Civil Procedure during that time.

Following the expedited discovery period, Plaintiffs may file a supplemental memorandum in support of their motion for a prejudgment writ of attachment. Mr. Betts and Mr. Howell may respond to that supplemental memorandum, and Plaintiffs may reply. The Parties are ORDERED to meet and confer after the expedited discovery period ends regarding a Scheduling Order for this case, including deadlines for the supplemental briefing .

Until the court enters an order regarding the Plaintiffs' motion for a prejudgment writ of attachment, Mr. Betts and Mr. Howell are ORDERED not to assign, convey or transfer any interest in assets within their control except in the normal operation of their of businesses without first giving Plaintiffs ten days' written notice.

SO ORDERED this 6th day of January, 2009.

BY THE COURT:

  
Clark Waddoups  
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

ALBION INTERNATIONAL, INC.,  Plaintiff,  vs.  AMERICAN INTERNATIONAL CHEMICAL, INC., a Massachusetts corporation, AMT LABS, INC., a Utah corporation, and GLOBAL CALCIUM PRIVATE LIMITED, an Indian private limited company,  Defendants.	<b>ORDER DENYING DEFENDANT AMT LABS, INC.'S MOTION FOR A PROTECTIVE ORDER</b>  Civil No. 2:07cv00994  Judge Clark Waddoups
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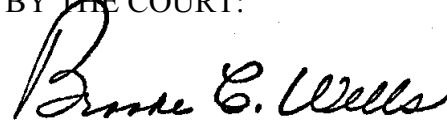
This matter is before the Court on Defendant AMT Labs, Inc.'s ("AMT") Motion for a Protective Order [Dkt. No. 44]. On December 17, 2008, the Court held a hearing on AMT's Motion. At the hearing, Plaintiff Albion International, Inc. ("Albion") was represented by Mark M. Bettilyon and Arthur B. Berger. AMT was represented by Martin R. Denney. Defendant American International Chemical, Inc. Was represented by Kevin J. Simon. Based on the parties' briefing submitted to the Court in connection with the Motion, and the arguments of counsel at the hearing, and good cause appearing,

IT IS HEREBY ORDERED as follows:

1. AMT's Motion is DENIED.
2. No later than December 19, 2008, Albion shall identify in writing two AMT products it tested prior to filing its Complaint in this action.
3. No later than February 2, 2008, AMT shall fully respond to Plaintiff's First Set of Interrogatories, Requests for Production of Documents, and Requests for Admission, and Request for Inspection to Defendant AMT Labs, Inc., served on AMT on March 26, 2008, with respect to ten of AMT's products to be identified in writing by Albion, which ten shall include the two products tested by Albion (for a total of ten products). To the extent Albion's requests are of general application, for example Albion's Interrogatory No. 1 seeking AMT's definition of a chelate, AMT must also fully respond to those requests, even if they encompass information relating to products other than the ten identified by Albion.

DATED this 6 day of January, 2009.

BY THE COURT:

A handwritten signature in black ink, reading "Brooke C. Wells". The signature is written in a cursive, flowing style. The first letter "B" is large and loops around the first part of the name. The signature is positioned above a horizontal line.

Hon. Brooke C. Wells  
United States Magistrate Judge



FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

JAN 05 2009

D. MARK JONES, CLERK  
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BRETT ALAN DIETZEL,

Defendant.

ORDER EXCLUDING TIME  
UNDER THE SPEEDY TRIAL  
ACT AND RESETTING TRIAL

2:08-CR-00586-TS

Judge Ted Stewart


This matter comes before the Court on a request for continuance.

The matter had previously been set for trial on January 5, 2009. Based on motion by defendant, the trial date is continued to May 11, 2009. The Court finds that there is a need for the continuance to allow defense counsel time for preparation for trial. The Court finds the ends of justice would be served by this continuance and outweigh the best interests of the public and the defendant in a speedy trial. Without a continuance it would make the proceeding impossible and could result in a miscarriage of justice. The Court further finds that the United States does not object to such a continuance.

The time between December 22, 2008, and May 11, 2009, is excluded for speedy trial purposes. The Court finds that it is in the best interests of the defendant and the public to continue this matter and to exclude this time from the Speedy Trial calculation. The Court finds that 1) the ends of justice served by excluding such time outweigh the best interests

of the public and the defendant in a speedy trial, and 2) it is necessary to continue this matter based on the need for additional time for adequate preparation for trial for trial within the time periods as set forth in 18 U.S.C. § 3161. The Court finds that the additional time for the review of discovery and preparation for trial is excluded from any computation of time pursuant to 18 U.S.C. § 3161(h)(8)(A) & (B).

DATED this 5th day of January, ~~2008~~ 2009.

  
TED STEWART  
United States District Judge

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

JAN 06 2009

BY D. MARK JONES, CLERK  
DEPUTY CLERK

---

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

---

UNITED STATES OF AMERICA,	:	ORDER GRANTING LEAVE TO DISMISS
Plaintiff,	:	MISDEMEANOR INFORMATION
v.	:	Case No. 2:08-CR-795
MICHAEL T. STEJSKAL,	:	Failure to Pay Fee
Defendant.	:	(43 U.S.C. § 1701 and
	:	43 C.F.R. 8365.2-3(a))
	:	Chief Magistrate Judge Samuel
	:	Alba

---

Based upon the Motion of the United States of America, and for good cause appearing, the Court hereby grants the government leave to dismiss the above-captioned Misdemeanor Information, without prejudice, under Rule 48(a) of the Federal Rules of Criminal Procedure.

DATED this 6<sup>th</sup> day of January, 2008.

BY THE COURT:



United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH -- CENTRAL DIVISION

---

XLEAR, ET AL.,

Plaintiffs,

**ORDER TO SHOW CAUSE**

vs.

PROHEALTH, ET AL.,

Civil No. 2:08-cv-00629 DAK

Defendants.

---

Plaintiffs are hereby ordered to show cause why this case should not be dismissed without prejudice as service of process has not been completed within 120 days, pursuant to F.R.C.P. 4(m). The file indicates no activity since the complaint was filed on August 20, 2008. Plaintiffs are directed to respond in writing within 15 days from the date of this order and inform the Court of the status of the case and intentions to proceed. Failure to do so will result in dismissal of the case.

Dated this 6th day of January, 2009.



Dale A. Kimball  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH -- CENTRAL DIVISION

---

PARABEN,

Plaintiff,

**ORDER TO SHOW CAUSE**

vs.

IDENTITY STRONGHOLD,

Civil No. 2:08-cv-00635 DAK

Defendants.

---

Plaintiff is hereby ordered to show cause why this case should not be dismissed without prejudice as service of process has not been completed within 120 days, pursuant to F.R.C.P. 4(m). The file indicates no activity since the complaint was filed on August 25, 2008. Plaintiff is directed to respond in writing within 15 days from the date of this order and inform the Court of the status of the case and intentions to proceed. Failure to do so will result in dismissal of the case.

Dated this 6th day of January, 2009.



Dale A. Kimball  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

STANLEY L. WADE,

Plaintiff,

vs.

No. 2:08-cv-00641 JEC

RANDELL T. GAITHER,

Defendant.

ORDER OF RECUSAL

I hereby recuse myself in this case and ask that the appropriate assignment card equalization be drawn by the Clerk's Office.

DATED January 6, 2009.

s/John Edwards Conway

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JOHN EDWARDS CONWAY  
Senior United States District Judge  
Sitting by Designation from the District of New Mexico

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH -- CENTRAL DIVISION

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EQUITABLE LIFE & CASUALTY  
INSURANCE COMPANY,

Plaintiff,

**ORDER TO SHOW CAUSE**

vs.

COMMEMORATIVE LIFE  
INSURANCE SERVICES,

Civil No. 2:08-cv-00658 DAK

Defendant.

---

Plaintiff is hereby ordered to show cause why this case should not be dismissed without prejudice as service of process has not been completed within 120 days. The file indicates no activity since the complaint was filed on September 2, 2008, and the Order Granting Voluntary Dismissal of the co-defendant issued on December 30, 2008. Plaintiff is directed to respond in writing within 15 days from the date of this order and inform the Court of the status of the case and intentions to proceed. Failure to do so will result in dismissal of the case.

Dated this 6th day of January, 2009.



Dale A. Kimball  
United States District Judge

Arthur B. Berger (6490)  
Frederick R. Thaler, Jr. (7002)  
RAY QUINNEY & NEBEKER P.C.  
36 South State Street, Suite 1400  
P.O. Box 45385  
Salt Lake City, Utah 84145-0385  
Telephone: (801) 532-1500  
Facsimile: (801) 532-7543

*Attorneys for Plaintiff Zoobies, LLC*

FILED  
U.S. DISTRICT COURT

2009 JAN -5 P 2:56

DISTRICT OF UTAH

BY:

---

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

ZOOBIES, LLC, a Utah limited liability  
company,

Plaintiff,

v.

KUD'LEE BUG'ZZZ, INC., an Indiana  
coporation, d/b/a KUD'LEE BUG'ZZZ;  
DONNA MICHAUD, an individual, f/k/a  
DONNA DIETL, and d/b/a KUD'LEE  
BUG'ZZZ; and DOES 1-10,

Defendants.

ORDER GRANTING MOTION FOR  
EXTENSION OF TIME TO SERVE  
COMPLAINT

Civil No. 2:08-CV-679-TC

---

Based on the motion of Plaintiff Zoobies, LLC ("Zoobies"), pursuant to Rule 4(m) of the  
Federal Rules of Civil Procedure, and good cause appearing,



IT IS HEREBY ORDERED that the time for Zoobies to effect service of the Complaint in this action is extended until and including April 6, 2009.

DATED this 5<sup>TH</sup> day of January, 2009.

BY THE COURT:

*Tena Campbell*

---

Hon. Tena Campbell  
U.S. District Judge

---

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**  
**CENTRAL DIVISION**

---

**ELIZABETH BIERLY, et al.,**

**Plaintiffs,**

**v.**

**MARK HIRATA, et al.,**

**Defendants.**

**ORDER OF RECUSAL**

**Case No. 2:08-cv-948-TC**

**Chief District Judge Tena Campbell**

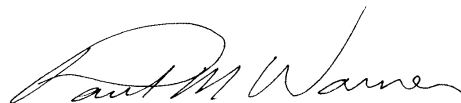
**Magistrate Judge Paul M. Warner**

I recuse myself in this case and ask that it be referred to another Magistrate Judge.

**IT IS SO ORDERED.**

DATED this 5th day of January, 2009.

BY THE COURT:



---

PAUL M. WARNER  
United States Magistrate Judge

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

TRENT WEST,

Plaintiff,

v.

JC PENNEY CORP., INC.,

Defendant.

ORDER TO SHOW CAUSE

Case No. 2:08mc0947 DB

Judge Dee Benson

Magistrate Judge Brooke C. Wells

On December 8, 2008, Fable Jewelry Company located in West Jordan, Utah, moved the Court to quash an alleged “defective and improper third-party subpoena from Defendant JC Penney Corp.”<sup>1</sup> There has been no opposition filed by Defendant.

Local rule 7-1(b)(4)(B) provides in relevant part, “A memorandum opposing a motion . . . must be filed within fifteen (15) days after service of the motion or within such extended time as allowed by the court.”<sup>2</sup> The local rules go on to provide that “Failure to respond timely to a motion may result in the court’s granting the motion without further notice.”<sup>3</sup>

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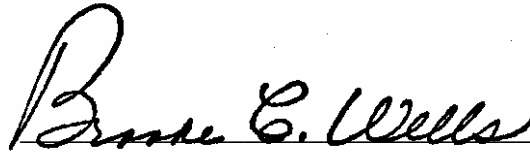
<sup>1</sup> Motion p. 1, docket no. 1.

<sup>2</sup> DUCivR 7-1(b)(4)(B) (2008).

<sup>3</sup> DUCivR 7-1(d).

Accordingly, Defendant is hereby ORDERED TO SHOW CAUSE within Seven (7) days from the entry of this order why Fable Jewelry's motion to quash should not be granted forthwith by the court.

DATED: January 5, 2009 BY THE COURT

A handwritten signature in black ink, reading "Brooke C. Wells". The signature is written in a cursive style with a large initial "B".

Brooke C. Wells  
United States Magistrate Judge

**United States District Court**  
**District of Utah**

2009 JAN -6 PM 12:33

**UNITED STATES OF AMERICA**

**vs.**

**Thomas P. Fabien**

**JUDGMENT IN A CRIMINAL CASE**

(For Offenses Committed On or After November 1, 1987)

Case Number: DUTX 2:09cr00001-001 SA

Plaintiff Attorney: **Stan Olsen**

Defendant Attorney: **David Christensen**

Atty: CJA \_\_\_ Ret \_\_\_ FPD **X**

Defendant's Soc. Sec. No.: XXX-XX-XXXX

Defendant's Date of Birth: XX-XX-XXXX

Defendant's USM No.: N/A

Defendant's Residence Address:

268 North Millbrook

Heber City, UT 84032

Country USA

1/6/2009

Date of Imposition of Sentence

Defendant's Mailing Address:

Country

**THE DEFENDANT:**

☒ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s)  
which was accepted by the court.

☐ was found guilty on count(s)

COP \_\_\_\_\_ Verdict \_\_\_\_\_

**Title & Section**

43:1701 and 43 C.F.R

8365.1-3(a)

**Nature of Offense**

Operating Vehicle in Excess of Posted Speed Limit

and in a Reckless, Careless and Negligent Manner

**Count**

**Number(s)**

**I**

☐ The defendant has been found not guilty on count(s)

☐ Count(s) \_\_\_\_\_ (is)(are) dismissed on the motion of the United States.

**SENTENCE**

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of

**None**

Upon release from confinement, the defendant shall be placed on supervised release for a term of

**None**

☐ The defendant is placed on Probation for a period of \_\_\_\_\_.

The defendant shall not illegally possess a controlled substance.

*For offenses committed on or after September 13, 1994:*

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

### **SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION**

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

1.

### **CRIMINAL MONETARY PENALTIES**

#### **FINE**

The defendant shall pay a fine in the amount of \$ 45.00 , payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☒ other:  
Total fines and fees due by 2/6/2009

- ☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).
- ☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), it is ordered that:
- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:

#### **RESTITUTION**

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
----------------------------------	-----------------------	--

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
----------------------------------	-----------------------	--

Totals: \$ \_\_\_\_\_ \$ \_\_\_\_\_

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

- ☐ Restitution is payable as follows:
- ☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.
  - ☐ other: \_\_\_\_\_

- ☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until \_\_\_\_\_ pursuant to 18 U.S.C. § 3664(d)(5)(not to exceed 90 days after sentencing).
- ☐ An Amended Judgment in a Criminal Case will be entered after such determination

#### SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ 25.00, payable as follows:

- ☐ forthwith.
- ☒ Total fines and fees due by 2/6/2009

**IT IS ORDERED** that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

#### PRESENTENCE REPORT/OBJECTIONS

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

#### DEPARTURE

The Court grant the Motion for Departure pursuant to 18 U.S.C. 3553(c)(2), the Court enters its reasons for departure:

#### RECOMMENDATION

- ☐ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:
- \_\_\_\_\_

Defendant: Thomas P. Fabien  
Case Number: 2:09cr00001-001 SA

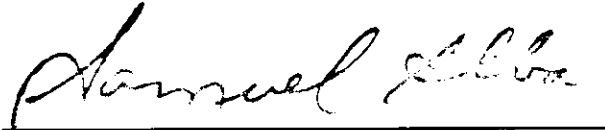
Page 4 of 5

**CUSTODY/SURRENDER**

- ☐ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district at \_\_\_\_\_ on \_\_\_\_\_.
- ☐ The defendant shall report to the institution designated by the Bureau of Prisons by \_\_\_\_\_ Institution's local time, on \_\_\_\_\_.

DATE:

January 6, 2009



Samuel Alba

United States Magistrate Judge



Defendant: Thomas P. Fabien  
Case Number: 2:09cr00001-001 SA

Page 5 of 5

**RETURN**

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
Deputy U.S. Marshal

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

JAN 06 2009

BY D. MARK JONES, CLERK  
DEPUTY CLERK

**DENIED**

JERRY D. REYNOLDS (8748), for:  
**HOWARD, LEWIS & PETERSEN, P.C.**  
ATTORNEYS AND COUNSELORS AT LAW  
120 East 300 North Street  
P.O. Box 1248  
Provo, Utah 84603  
Telephone: (801) 373-6345  
Facsimile: (801) 377-4991  
[reynoldsi@provolawyers.com](mailto:reynoldsi@provolawyers.com)

Our File No. 72208

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

Shari C. Holweg and Timothy J. Holweg,  
husband and wife; ,

Plaintiffs,

vs.

Accredited Home Lenders, Inc., a California  
Real Estate Lender, Chase Home Finance,  
LLC, A California Limited Liability  
Company, Advance Title, a Utah Title  
Insurance Company, and eTitle Insurance  
Agency, Trustee, a Utah Company, Mortgage  
Electronic Registration Systems, Inc., and  
John Does I - V,

Defendants..

**PLAINTIFFS' REQUEST TO  
RECONSIDER THE DENIAL OF  
PLAINTIFF'S EX-PARTE REQUEST  
FOR RESTRAINING ORDER**

Case No. 2:09-00001

Judge: Ted Stewart

COME NOW the Plaintiffs, and hereby move this Court to reconsider It's denial of Plaintiffs' request for an ex-parte restraining order to be issued against the named Defendants, Accredited Home Lenders, Inc., and eTitle Insurance Agency, on the grounds that this Court may not have

received sufficient facts and information to make an informed decision, based on Plaintiffs' initial filings, and affidavits of this legal counsel.

As shown in the accompanying "Third Affidavit of Counsel" which accompanies this Motion to Reconsider, the Plaintiffs and the concerned Defendants had a prior agreement, reached through prior legal counsel of record in their prior case, that Defendants' attorney would notify Plaintiffs' attorney at least 30 days prior to any reset of Defendants notice of foreclosure sale of Plaintiff's residence, and Plaintiffs' attorney was not so notified.

Secondly, Defendants Accredited and eTitle both had actual knowledge of Plaintiffs' application for a Temporary Restraining Order, through their attorney Deanna Lasker-Warden, of LUNDBERG AND ASSOCIATES, and could have been reached in a telephone conference call by the Court yesterday afternoon at the attorney number supplied in Plaintiffs' attorney's First and Second Affidavit, as shown in the accompanying Affidavit attached hereto.

These Defendants can be reached by the Court anytime today at the same telephone number furnished previously, (801) 263-3400 ext. 211.

DATED THIS 6<sup>th</sup> day of January, 2009.

  
Jerry D. Reynolds

CERTIFICATE OF SERVICE

I hereby Certify that I did on this 6<sup>th</sup> day of January, 2009, serve a true copy of the above  
"Plaintiffs' Request for Reconsideration of Denial of Plaintiff's Previous Request for an Ex Parte  
Restraining Order" upon counsel for the Defendants Accredited Home Lenders, Inc., and eTitle  
Insurance Agency, to-wit:

DEANNA LASKER-WARDEN  
LUNDBERG AND ASSOCIATES  
3269 South Main Street, #100  
Salt Lake City, UT 84115  
VIA FAX: (801) 263-6513

Dated this 6<sup>th</sup> day of January, 2009.

Linda Manning  
Secretary

FILED  
U.S. DISTRICT COURT

2009 JAN -5 P 2:55

RECEIVED

**LEECIA WELCH**

**JOHN F. O'TOOLE**

**NATIONAL CENTER FOR YOUTH LAW**

405 14<sup>th</sup> Street, 15<sup>th</sup> Floor BY:

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San Francisco, California 94105-2482

(415) 268-7000

**Attorneys for Plaintiffs**

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**ATTORNEY GENERAL**

**CRAIG L. BARLOW (USB #0213)**

**SUSAN EISENMAN (USB #6872)**

**ASSISTANT ATTORNEYS GENERAL**

**FOR THE STATE OF UTAH**

5272 College Drive

Murray, Utah 84123

(801) 281-1234

**Attorneys for Defendants**

IN THE UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF UTAH, CENTRAL DIVISION

DAVID C., *et al.*,

Plaintiffs

v.

JON M. HUNTSMAN, JR., *et al.*,

Defendants

**ORDER OF DISMISSAL WITH  
PREJUDICE**

**CIVIL NO: 2:93-CV-00206 TC**

**JUDGE CAMPBELL**

The Court is in receipt of the parties' Joint Notice of Dismissal, submitted on December 30, 2008. The Court finds that the notice required by Rule 23(e) of the Federal Rules of Civil Procedure was previously given when the Court dismissed the case without prejudice on June 28, 2007. At this time, the parties and Court Monitor agree that the defendant State of Utah has

complied with the terms of the settlement agreement, and that dismissal with prejudice is appropriate.

IT IS HEREBY ORDERED that:

David C. v. Huntsman, et al. is dismissed with prejudice.

Dated this 5 day of Jan, 2008/9.

UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH



TENA CAMPBELL

United States District Court Judge, District of Utah